



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
JAMES BILLUPS,)	
)	
Complainant,)	
)	Charge No.: 1999CA0846
and)	EEOC No.: 21B990077
)	ALS No.: 11024
CHICAGO TRANSIT AUTHORITY,)	
)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On September 20, 1999, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, James Billups. That complaint alleged that Respondent, Chicago Transit Authority, harassed Complainant on the basis of a mistaken perception that he had a mental handicap.

This matter now comes on to be heard for reconsideration of Respondent's motion for summary decision. The motion initially had been stricken for failure to provide clear proof that it had been served upon the Department of Human Rights. When proof of such service was provided, the administrative law judge agreed to consider the motion on its merits.

Although he was served with notice that the motion for summary decision was to be considered, Complainant has failed to file any response to the motion. The matter is now ready for decision.

FINDINGS OF FACT

The following facts were derived from the record file in this matter.

1. On November 8, 2000, Respondent filed a motion for summary decision.

2. On July 25, 2001, Respondent's motion was stricken for failure to file proof of service of the motion upon the Illinois Department of Human Rights (DHR).

3. On August 17, 2001, Respondent refiled its motion for summary decision, and asked that the motion be reconsidered. When the motion was refiled, Respondent included proof of service of the motion upon the DHR.

4. On October 18, 2001, Complainant's attorney of record was given leave to withdraw his appearance. An order was entered which gave Complainant 21 days to retain new counsel or to file his own *pro se* appearance. The order set a new status date of December 4, 2001 and required the attendance of both parties at that status hearing. Because Complainant did not appear on October 18, the order entered that day was served upon him by mail.

5. Since the withdrawal of Complainant's original attorney, no attorney has entered an appearance on Complainant's behalf. Complainant has not filed a *pro se* appearance.

6. Complainant has not filed any response to Respondent's motion for summary decision.

7. This matter was up for status on December 4, 2001. Complainant did not appear at that time.

CONCLUSIONS OF LAW

1. Respondent's motion articulates a legitimate, non-discriminatory reason for its actions.

2. Complainant has failed to raise a genuine issue of material fact on the issue of pretext.

3. A summary decision in favor of Respondent is appropriate in this case.

4. Complainant's failure to prosecute this matter has unreasonably delayed these proceedings.

5. This matter should be dismissed with prejudice.

DISCUSSION

Respondent has filed a motion for summary decision, but Complainant has failed to file any response. Moreover, since his counsel withdrew, Complainant has taken no action to prosecute this matter. Given that combination of factors, dismissal is the only appropriate disposition.

Respondent initially filed its motion for summary decision on November 8, 2000. On July 25, 2001, Respondent's motion was stricken for failure to file proof of service of the motion upon the Illinois Department of Human Rights (DHR). However, on August 17, 2001, Respondent refiled its motion for summary decision, and asked that the motion be reconsidered. When the motion was refiled, Respondent included proof of service of the

motion upon the DHR. Throughout that sequence of events, Complainant did nothing to dispute the merits of Respondent's motion.

On October 18, 2001, Complainant's attorney of record was given leave to withdraw his appearance. An order was entered which gave Complainant 21 days to retain new counsel or to file his own *pro se* appearance. The order set a new status date of December 4, 2001 and required the attendance of both parties at that status hearing. Because Complainant did not appear on October 18, the order entered that day was served upon him by mail. Since the withdrawal of Complainant's original attorney, no attorney has entered an appearance on Complainant's behalf, and Complainant has not filed a *pro se* appearance.

Cases are analyzed in this forum using a three-part method. First, the complainant must establish a *prima facie* showing of discrimination. If he does so, the respondent must articulate a legitimate, non-discriminatory reason for its actions. For the complainant to prevail, he must then prove that the respondent's articulated reason is pretextual. ***Zaderaka v. Human Rights Commission***, 131 Ill. 2d 172, 545 N.E.2d 684 (1989). See also ***Texas Dep't of Community Affairs v. Burdine***, 450 U.S.251 (1981).

Respondent's motion for summary decision can be decided on the basis of the documents in the record file. A summary decision is analogous to a summary judgment in the Circuit Court. ***Cano v. Village of Dolton***, 250 Ill. App. 3d 130, 620 N.E.2d 1200

(1st Dist. 1993). A motion for summary decision should be granted when there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. **Strunin and Marshall Field & Co.**, 8 Ill. HRC Rep. 199 (1983).

Respondent's motion articulates a legitimate, non-discriminatory reason for its actions. Complainant needed to present a genuine issue of material that Respondent's articulated reason is pretextual. He failed to meet that burden.

Complainant offered no evidence whatsoever. Because he failed to contest Respondent's statements of fact, those statements stand unrebutted and must be accepted as true. **Koukoulomatis v. Disco Wheels**, 127 Ill. App. 3d 95, 468 N.E.2d 477 (1st Dist. 1984). Although Complainant need not prove his case at this juncture, he must provide some factual basis that would entitle him to prevail. **Schoondyke v. Heil, Heil, Smart & Golee, Inc.**, 89 Ill. App. 3d 640, 411 N.E.2d 1168 (1st Dist. 1980). Because of Complainant's inaction, there is no genuine issue of material fact on the issue of pretext and Respondent's motion should be granted.

Even without Respondent's motion, it would be appropriate to dismiss this action. As noted above, Complainant has not filed an appearance since his attorney withdrew. In addition, Complainant failed to appear at the most recent status conference on December 4, 2001.

Under section 8A-102(I)(6) of the Human Rights Act, 775 ILCS 5/1-101 *et seq.*, an administrative law judge may recommend dismissal of a case if a complainant fails to prosecute his case or appear at a scheduled hearing. Complainant's behavior meets that standard. His continued inaction, even in the face of a motion for summary decision, strongly suggests that he has abandoned his claim. As a result, it is appropriate to dismiss his claim with prejudice. See **Leonard and Solid Matter, Inc.**, ___ Ill. HRC Rep. ___, (1989CN3091, August 25, 1992).

RECOMMENDATION

Based upon the foregoing, there are no genuine issues of material fact and Respondent is entitled to a recommended order in its favor as a matter of law. Moreover, it appears that Complainant has abandoned his claim. Accordingly, it is recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: May 22, 2002